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**Admitted: OH, NY**

**December 18, 2020**

**Via ECF**

The Honorable Pamela K. Chen  
United States District Court  
225 Cadman Plaza East  
Brooklyn New York 11201

**Re: *Tymar Distribution LLC v. Rivelle Products, Inc. et al*; Case No. 1:20-cv-00719-PKC-SJB**

Dear Judge Chen:

Undersigned is counsel to plaintiff Tymar Distribution, LLC. Pending before Your Honor are defendants' Motions to Dismiss, ECF 52 and 54, and plaintiff's opposition, ECF 63.

Plaintiff hereby submits as supplemental authority in further opposition to defendants' motions to dismiss the December 7, 2020 decision of Judge Jed S. Rakoff in *Smart Study Co. v. Bichha123*, No. 20-cv-7889 (JSR), 2020 U.S. Dist. LEXIS 229838 (S.D.N.Y. Dec. 7, 2020). Upon allegations of counterfeiting similar to those of defendants here, Smart Study had obtained TRO's against multiple parties . . . but only one such defendant appeared to contest preliminary injunctive relief. As here, the at-bottom issue was whether a manufacturer/trademark holder whose product is first manufactured and trademarked with the trademark owner's consent may thereafter enjoin as

counterfeit that same product when sold by a downstream non-channel dealer without consent. Judge Rakoff held that answering defendant was wrongfully enjoined because answering defendant had every right to acquire and sell that product under the First Sale Doctrine. The Judge vacated the TRO and issued lost profits and cost-of-compliance damages against plaintiff.

Defendants in the instant case have argued that they properly regarded and reported Tymar's sales of authentic product to be counterfeit. See ECF 54 at p. 15 ("As a matter of law in this Circuit, a "counterfeit" is any good marked with a trademark and distributed without the manufacturers consent--even if the good did, in fact, originate from the manufacturer.")

Respectfully submitted,

/s/ Mark Schlachet

cc: All Counsel (ECF)